

The Gazette of India



EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 431] NEW DELHI, THURSDAY, OCTOBER 16, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 16th October, 1952

No. 19/66/52-Elec.III.—WHEREAS, the election of Shri Maruti Sitaram Sawant of Ambewadi, Roha Taluka, Kolaba District, as a member of the Legislative Assembly of Bombay from the Roha Sudhagad constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shankar Nanasaheb Karpe of 155, Ganesh Peth, Poona 2;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 66 OF 1952

Coram

Exhibit No. 46

Shri B. V. Manjeshwar, B.A., LL.B., Chairman.

Shri R. R. Karnik, B.A., LL.B. } Members of the Election Tribunal.
Shri L. P. Pendse, B.A., LL.B. }

In the matter of the Representation of the People Act, 1951.

AND

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

AND

In the matter of the Petition presented thereunder by Shri Shankar Nanasaheb Karpe, Petitioner.

Versus

1. Maruti Sitaram Sawant.
2. Pandurang Ramji Sanap.
3. Rajaram Mukund Chandorkar.

JUDGMENT

This is a petition of one Shri Shankar Nanasaheb Karpe, under section 81 of the Representation of the People Act, 1951, Act No. XLIII of 1951, (hereinafter referred to as the Act), for setting aside the election of respondent No. 1 Shri Maruti Sitaram Sawant as a member of the Bombay Legislative Assembly from Roha-Sudhagad Constituency in this District.

2. The material facts giving rise to the petition are briefly these. In the last general elections of members for the Bombay Legislative Assembly which was to be constituted under the new Constitution the voters of Roha-Sudhagad constituency were called upon to elect a member for one seat in the Assembly from that constituency. The petitioner who was a voter in the electoral roll for Assembly Constituency wanted to stand as a candidate for that seat. He therefore filed his nomination paper before the Returning Officer of the said Constituency at Mahad on 23rd November 1951. Respondents Nos. 1, 2 and 3, who were rival candidates for the same seat, also put in their nomination papers before the Returning Officer. The scrutiny of all the nomination papers took place at Mahad before the Returning Officer on 27th November 1951. At that time respondent No. 3 took objection to the nomination of the petitioner on the ground that the petitioner was disqualified from being a member of the Legislative Assembly under section 7 (d) of the Act as he was a Government Forest Contractor at the material period. In answer to the objection the petitioner stated to the Returning Officer that he was a mere forest contractor who had purchased coupes from the Forest Department by giving tenders or by public auction and that therefore his nomination did not fall within the purview of section 7(d) and should be accepted. But the Returning Officer upheld the objection of respondent No. 3 and rejected the nomination paper of the petitioner. The election was subsequently held on 7th January 1952 in the absence of the petitioner contesting the same and out of the candidates, respondent No. 1 was declared as duly elected and his name was published in the Bombay Government Gazette, dated 31st January 1952.

3. Being aggrieved by the order of the Returning Officer rejecting his nomination paper, the petitioner made this election petition to the Election Commission under section 81 of the Act. He prayed for a declaration that his nomination was wrongly rejected by the Returning Officer and that the said election was wholly void owing to the improper rejection of his nomination paper and he further asked for such other reliefs as he might be found entitled to. The said election petition has been referred to us by the Election Commission under section 86 of the Act for trial and disposal according to law.

4. Respondent No. 1, by his written statement (Exh. 23), contended that the petitioner was a Government Forest Contractor at the material period, that the terms and conditions of the petitioner's agreements with the State Government, which were subsisting between the parties on the date of the nomination, put upon the petitioner the responsibility of supplying certain goods to the State of Bombay, if it was so demanded by the State, at a particular rate and place and that further under the terms of the said agreements the petitioner had a share or interest in the performance of services undertaken by the State Government for felling the trees in the coupe areas and for clearing the coupes in a particular manner and method and therefore the petitioner did incur a disqualification within the purview of section 7(d) of the Act.

5. Respondent No. 2 appeared but filed no written statement.

6. Respondent No. 3 did not enter appearance.

7. The District Government Pleader, Kolaba, who appeared for the Advocate General, Bombay, did not put in any written statement.

8. At the trial the petitioner was represented by Shri N. K. Rajguru, Shri M. Dhamdhere and Shri B. G. Limaye. Respondent No. 1 was represented by Shri J. V. Lele and Shri V. G. Limaye. Shri D. N. Patil represented respondent No. 2, but remained absent. The Advocate General, Bombay was represented by the District Government Pleader, Kolaba.

9. After hearing both the sides, the Tribunal settled the following issues for decision:

- (1) Whether the Petitioner proves that the rejection of his nomination paper by the Returning Officer under Section 7(d) of the Representation of the People Act, 1951 (Act No. XLIII of 1951) was wrong and improper and that the result of the election is materially affected thereby?
- (2) Whether the election of respondent No. 1 as a member of the Bombay Legislative Assembly is void and liable to be set aside?

10. The findings of the Tribunal on both the issues are in the negative for the following reasons.

11. The grounds of disqualification for membership of Parliament or of a State Legislature are enumerated in clauses a, b, c, d, e and f of section 7 of the Act. We are now concerned with clause (d) only. Omitting the unnecessary portion it provides that

“A person shall be disqualified for being chosen as and for being a member..... of the Legislative Assembly..... of a State..... if..... he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government.”

Under this clause, therefore, a person is disqualified from becoming a member of a State Legislative Assembly in any one of the following 3 cases, viz. (i) if he has any share or interest in a contract for the supply of goods to the particular State Government, or (ii) if he has any share or interest in a contract for the execution of any works undertaken by the particular State Government, or (iii) if he has any share or interest in a contract for the performance of any services undertaken by the particular State Government. In the present case therefore if the petitioner comes under any one of these grounds, he would be disqualified from becoming a member of the Bombay Legislative Assembly.

12. The petitioner was admittedly a forest contractor at the material period. He purchased certain coupes in 3 different villages from Government by executing agreements Exhs. 39, 40 and 41 in favour of Government on 4th September 1951. They were for a period of 7 months and 26 days ending on 30th April 1952. They were executed as the result of tenders called for by the Divisional Forest Officer, Kolaba, for the purchase of certain trees in the coupes belonging to Government. All the 3 agreements are in identical terms. Among other things, the petitioner under these agreements purchased and contracted to fell and remove timber, firewood and other things specified in the schedule annexed to the agreements and to remove charcoal from the coupes after paying certain amounts by way of earnest and the balance subsequently at the period stated in the agreements. The agreement deeds also imposed certain conditions on the petitioner and provided that in the event of breach of any of the conditions by the petitioner, the Government had a right to cancel the agreements or any part thereof and besides the petitioner was liable to the penalties mentioned in the agreements.

13. Out of the conditions imposed on the petitioner under the agreement deeds the material condition with which we are now concerned in the first instance is the condition laid down in slip No. 10 which is incorporated in the main agreement under column I clause (r). It provides *inter alia* that when the production of 1951-52 sales is ready, if the contractor is called upon by Government to sell his stock of firewood and charcoal, he will have to sell his stock to Government at a certain maximum ‘ceiling selling price’ specified in the slip. It is urged for respondent No. 1 that as the petitioner under this condition agreed to resell his stock of firewood and charcoal to Government at a specified rate if and when called upon by Government, this agreement amounted to a contract by the petitioner to supply the said goods to Government within the meaning of the first part of section 7(d) and therefore he was disqualified from contesting a seat in the Bombay Legislative Assembly. On behalf of the petitioner it is admitted that he was bound to give to Government his stock of firewood and charcoal if Government made a demand for the same under this condition, but it is contended for the petitioner that this did not amount to a contract for the supply of goods to Government within the meaning of section 7(d). It was argued that the meaning of the term ‘supply’ was entirely different from that of term ‘sell’. It was urged that the dictionary meaning of the term ‘supply’ connotes “to fill up, to keep full or to replenish” etc. and that it further implies that one party is in need of something and that the other party agrees to supply that want. Therefore it is contended for the petitioner that by no stretch of imagination the expression ‘sell’ could be brought within the ambit of the word ‘supply’. The Tribunal has carefully considered the meaning of the term ‘supply’. The opinion of the Tribunal is that the term ‘supply’ is very comprehensive and includes a transaction of sale. If the petitioner agreed to give Government his stock of firewood and charcoal when ready at a particular ceiling rate it meant that he contracted to supply Government the said quantity of goods. It is impossible to hold that there was only a contract to resell to Government the said quantity of goods and that it did not amount to a contract to supply goods to Government.

14. It is further argued for the petitioner that he was only interested in the purchase of timber, firewood etc. from Government and had never desired to enter into any agreement to supply any goods to Government and that if he was to give his stock of firewood and charcoal to Government under the condition in slip No. 10, it was as a result of the terms of the agreement to purchase goods from Government and nothing more and therefore there was no contract as such by him to supply firewood and charcoal to Government within the meaning of section 7(d). The Tribunal is unable to accept this contention. The contract to supply goods to Government may arise as a result of the proposal from the petitioner or the Government or as a result of certain other contract between the two for purchase of certain goods from Government by the petitioner. Even though the contract to resell the said quantity of firewood and charcoal arose as a result of the said condition laid down in the agreement, the result was that the petitioner contracted to supply the said goods to Government. It is immaterial in what circumstances the said contract to supply arose. Reading the agreements again and again, the Tribunal sees no reason to say that the condition amounts to resell only and there was no contract to supply goods to government.

15. It was next contended for the petitioner that under the slip in question though there was an obligation on the part of the petitioner to give government his stock of firewood and charcoal, there was no corresponding liability on the part of Government to purchase the said goods at the instance of the petitioner if the Government were not inclined to have them. Therefore it was urged that it was really not a contract but was a one-sided affair inasmuch as the Government had the option to ask for the goods without any corresponding right on the part of the petitioner to compel Government to purchase the goods. It is not necessary for the Tribunal to elaborate on this argument. Admittedly the condition to sell the goods to Government was accepted by the petitioner and he admits that he was bound to give the goods to Government if they were pleased to call upon him to give them. It thus means that there was a contract in which the Government had a right to enforce the term and have the goods from the petitioner. The petitioner would have sold the goods to others if the Government had not exercised their option. There was nothing unfair or one-sided if he agreed to sell the goods to Government in the first instance at the specified ceiling rate. Fully knowing that if he had not agreed to the term, he would not obtain the contract of purchase, he allowed the said term to resell the goods to Government. There is no question that that term could be enforced by Government if a dispute arose. If the petitioner refused or was not inclined to give the goods to them under the terms of the contract, the Government had a right to put an end to the contract. It is not suggested for the petitioner that he was prepared to go to the length of getting the contract cancelled by refusing to give the goods. On the other hand, he admits in his deposition (Exh. 38) that he is to abide by the condition mentioned in the agreement deeds. In the circumstances, the Tribunal is of opinion that there was a valid contract to resell the goods to Government and this contract to resell amounted to a contract for the supply of goods to Government within the meaning of section 7(d).

16. It was next feebly argued for the petitioner that the contract to sell as shown by condition in slip No. 10 is not a valid contract inasmuch as the quantity to be given and the place of delivery are not mentioned in the agreement. The Tribunal sees no substance in this contention either. The condition clearly shows that Government was to exercise their option when the stocks of firewood and charcoal are ready. This means that that option was to ask the petitioner to give them the whole stock or a lesser quantity. As regards the place of delivery, the stocks were to be kept on the land or site of Government inside the coupe itself and the only thing to be done was to ask the Government to take them and the Government may take them anywhere they like.

17. In conclusion, the Tribunal is satisfied that the petitioner has incurred a disqualification under the first part of section 7(d), of the Act by virtue of the contract on his part to supply firewood and charcoal stocks to Government when the stocks were ready and at the ceiling rates specified in the agreements. In this view of the case, this petition must fail and it is not necessary for the Tribunal to consider whether the petitioner has incurred disqualification also under the second or third part of section 7(d). However, the Tribunal will deal with that aspect also briefly.

18. In the opinion of the Tribunal the petitioner has not incurred any disqualification under the second or third part of section 7(d). As pointed out above, in order to incur a disqualification under the second part a person must have contracted to execute works undertaken by the appropriate Government. It is

argued on behalf of respondent No. 1 that there are some conditions in the agreements which put upon the petitioner the liability to execute certain works. In this connection reliance is placed upon clause 1(d), slip No. 5 and slip No. 11(VII) of the agreements. Clause 1(d) provides that the contractor, i.e., the petitioner, shall clear all undergrowth and shrubs, burn fire traces 50 feet wide round the boundaries of the coupe and along the sides of internal roads so as to protect the coupe from fire, preserve all fire traces and entertain watchers to guard against fire and guards to prevent cattle from grazing within the coupe. Slip No. 5 and slip No. 11(VII) provide that he shall prepare rabs of particular dimensions in the coupe at places pointed out by the forest subordinates. It is argued for respondent No. 1 that the initial responsibility of doing these works was on Government for the preservation of the forest, that the petitioner as a contractor undertook to perform these works for and on behalf of Government and therefore he comes within the purview of the second part. The Tribunal is unable to accept this contention. It is important to note that the expression used in this clause is 'works' in plural and not 'work' in singular. The expression 'works' in plural connotes "Structures in civil, military or naval engineering, such as docks, bridges, embankments, trenches, fortifications and the like." (Vide Webster's dictionary). In the present case the words undertaken by the petitioner under the contracts can by no stretch of imagination be said to be 'works' contemplated under the second part. Next, in order to incur a disqualification under the third part a person must have contracted to perform services undertaken by the appropriate Government. It is contended for respondent No. 1, relying upon slips Nos. 9, 11(VIII) (ii) and 14, that the petitioner had undertaken to collect certain quantity of Ain and Babulbarks and Hirda fruits to meet the requirements of Dhors and other people of the locality and sell 'he same to them at a specified rate during the currency of his agreements and further agreed to provide on or near the work site adequate housing accommodation, to his labourers free of cost and to provide them with clean drinking water and lastly agreed not to obstruct the villagers in the removal of branch wood of fallen trees. It is argued that Government had undertaken to perform these services to Dhors and other villagers living in the neighbouring locality of the coupe and that the contractor, i.e., the present petitioner, contracted to perform those services for and on behalf of the Government and therefore he incurred disqualification under the third part. The Tribunal sees no substance in this contention either. These were not services, but were only facilities or concessions allowed by Government to the inhabitants of the neighbouring locality in consideration of the rights and privileges enjoyed by these villagers from ancient times.

19. In the result, the petitioner has incurred disqualification under the first part of section 7(d) as stated above. This petition therefore must fail and be dismissed.

20. As regards costs of this proceedings, it was pressed upon the Tribunal on behalf of the petitioner that the object of the petitioner in making this petition was to clarify the position of a forest contractor with reference to section 7(d) of the Act and therefore he should not be saddled with costs. On the other hand, it was contended for respondent No. 1 that he was unnecessarily dragged before the Tribunal although he had been successful in the election and that the objection to the nomination paper of the petitioner was taken before the Returning Officer not by him, but by respondent No. 3 and therefore he should be paid his costs. In the opinion of the Tribunal the petitioner, having failed in this proceeding, should pay the costs of respondent No. 1 on the general principle that costs shall follow the event. The quantum of costs is to be fixed by the Tribunal in its discretion. Considering all the circumstances, the Tribunal awards respondent No. 1 Rs. 100 as costs.

ORDER

This petition is dismissed. The petitioner shall pay Rs. 100 to respondent No. as costs.

(Sd.) B. V. MANJESHWAR,
Chairman.

(Sd.) R. R. KARNIK,

(Sd.) L. P. PANDSE,

Allbag, 11th October, 1952.

P. S. SUBRAMANIAN,
Officer on Special Duty,

